IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/06/2004

CORAM

THE HON'BLE Mr.JUSTICE V.KANAGARAJ

C.R.P. NPD. No. 2038 of 2003
and
C.M.P.No. 21351 of 2003

1.Anandababu
2.Chittibabu
3.Umesh Babu
4.Suseela ... Petitioners

-Vs-

Selvaraj ... Respondent

Civil Revision Petition is to set aside the order dated 09.10.2003 made in I.A.No.179 of 2001 in O.S.No.120 of 1998 on the file of Principal Sub-Judge, Tindivanam.

!For petitioners ... Ms.S.Hema Sampath

^For Respondent ... Mr.T.R.Rajaraman

:O R D E R
The above Civil Revision Petition has been filed under Section 115 of C.P.C. praying to set aside the order dated 09.10.2003 made in I.A.No.179 of 2001 in O.S.No.120 of 1998 on the file of the Court of Principal Sub-Judge, Tindivanam.

2. The subject matter is that the respondent herein is the plaintiff in O.S.No.120 of 1998 and he filed the suit before the Principal Sub-Court, Tindivanam for specific performance; that the petitioners were not intimated by their counsel about the case being posted for filing written statement; that on 13-06-2000, the suit was decreed exparte; that the petitioners came to know about this only after receiving notice in the E.P.; that the petitioners filed I.A.No. 179 of 2001 before the Court of the Principal Sub-Judge, Tindivanam, praying to condone the delay of 126 days and continue the case; that the petitioners submit that their non-appearance was neither wilful nor wanton, but due to the non-receipt of the communication from their advocate; that having aggrieved against the order of dismissal of the I.A. to condone the delay of 126 days in filing the petition for setting aside the exparte decree, the petitioners in I.A. has come forward to file the above Civil Revision Petition praying for the relief extracted supra.

3. Today, when the above civil revision petition came up for admission before this Court in the presence of the learned counsel for both, this Court is able to find that the order under challenge is the one passed by the Court of Principal Sub-Judge, Tindivanam, in I.A.No. 179 of 2001 in O.S.No.120 of 1998 dated 09-10-2003, thereby dismissing the petition seeking to condone the delay in filing the petition to set aside the exparte decree in O.S.No.120 of 1998, filed by the defendants 1 to 3 and 5/petitioners herein.

4. For the delay on the part of the petitioners, they would come forward to allege that on account of the non-receipt of the communication from their advocate the delay has occurred and it had become inevitable and on such grounds would pray to the relief extracted supra.

5. Considering the facts and circumstances of the case, this Court is of the view to pass orders on merit, since just for the simple reason that the petitioners were not able to appear on a single hearing, they should not be deprived of the opportunity to contest the main suit, wherein their substantial rights are involved and therefore, it is always desirable only to permit the defaulters to participate in the further proceedings, so as to decide the suit on merits and in accordance with law. Even in the worst cases of wilful default committed, the defaulter could only be punished with costs and not with denial of opportunity to prosecute the case, wherein their precious rights are at stake and hence, in all respects the only conclusion that could be arrived at by any Court in the circumstances of the case is to allow the application filed by the defaulters, imposing such costs. With the above proposition as held by the upper forums of law time and again including the Honourable Apex Court, this Court is of the view to allow the civil revision petition, of course on cost and hence, the following decision.

In result,

i.the civil revision petition is allowed with a cost of Rs.750/-, setting aside the fair and decretal order dated 09.10.2003 made in I.A. No.179 of 2001 in O.S.No.120 of 1998 by the Court of Principal SubJudge, Tindivanam;

ii.there shall be an order as to the payment of the said cost of Rs. 750/-, which shall be made to the learned counsel for the respondent on or before 22-07-2004, lest the order passed today will automatically get extinguished;

iii.the cost amount of Rs.750/- is paid by the learned counsel for the petitioner to the learned counsel for the respondent in the open Court and the same is recorded;

iv.consequently, C.M.P.No. 21351 of 2003 is closed.

Index: Yes
Internet: Yes

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To
The Principal Sub-Judge, Tindivanam.